UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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| UNIVERSAL CITY STUDIOS, INC., Plaintiff, -against- NINTENDO CO., LTD. and NINTENDO OF AMERICA, INC., Defendants. | 82 Civ. 4251 (RWS) PLAINTIFF'S RESPONSE TO THE FIRST SET OF INTERROGATORIES AND FIRST REQUEST FOR PRODUCTION BY DEFENDANT NINTENDO OF AMERICA, INC. |

Plaintiff Universal City Studios, Inc. ("Universal") by its attorneys, Townley & Updike, hereby answers the First Set of Interrogatories and Request for Production by defendant Nintendo of America, Inc. ("Nintendo America") as follows:

Interrogatory No. 1

Identify all agreements, written assignments or other conveyances entered into between Universal and RKO General, Inc. and Universal and the heirs of Merian C. Cooper whereby Universal claims to be the owner of all trade name, trademark, service mark and other rights in the name, character and story of King Kong.

Response to Interrogatory No. 1

Universal's rights in the trade name, trademark, service mark, character and story of "King Kong" derive from the following documents:

(a) The Final Judgment for Damages on Cross-Complaint of Richard Cooper, dated January 5, 1981 ("Cooper Judgment").

This decreed that, as between Cooper and RKO General, Inc. ("RKO"), Cooper was the owner of all rights in the name, character, and story King Kong except for two one picture licenses granted to RKO (note in particular, paragraph 1 of such Judgment).

(b) The Agreement of December 15, 1976 between Cooper and Universal, under which Cooper assigned to Universal, among other things, all of his rights under the Cooper Judgment and any subsequent judgment.

(c) The Settlement Agreement and Release, dated June 4, 1980, between Universal and RKO, which referred to the rights in the name, character and story of King Kong. Annexed hereto in Document Folder 1 are copies of these documents.

(d) An assignment of causes of action by RKO General, Inc. to Universal dated June 15, 1982.

Interrogatory No. 2

Describe each and every use in commerce of a trade name, trademark, or service mark involving the name, character and story of King Kong in which Universal claims an interest including the dates of such use and the product or service with which such use is associated. Attach specimens of such trade names, trademarks and service marks to your response.

Response to Interrogatory No. 2

As set forth in the documents produced in response to

Interrogatory No. 1, Universal's rights in the name, character and story of King Kong were acquired in the period 1976-1981. Universal is obtaining information from RKO General, Inc. which shows the use in commerce of "King Kong" as a trademark, trade name and service mark and of the "King Kong" gorilla character and the "King Kong" story prior to 1981 and will furnish defendant with such information after it is obtained. Other uses of "King Kong", notably in motion pictures and television programs, are described in paragraphs 6 and 7 of plaintiff's Complaint.

King Kong has also been used as a trade name, trademark or service mark subsequent to 1981 in conjunction with the advertising and promoting of the products manufactured under the licenses listed in response to Interrogatory No. 7. Specimens will be produced for inspection at the offices of plaintiff's attorneys at a time mutually convenient to the parties.

Interrogatory No. 3

State whether any applications have been filed by Universal or its licensees for trademark or service mark registration in connection with the name, character or story of King Kong. If so, identify the date of the applications, the products registered, and the disposition of the application. Identify all documents that refer or relate to such applications.

Response to Interrogatory No. 3

Yes. Universal presently has pending applications for federal trademark registrations for the name "King Kong" for a variety of goods. Copies of documents relating to these applications are annexed hereto in Document Folder 3. In addition, Mego Corporation, a licensee of Universal's predecessor in interest, RKO General, Inc., received a federal trademark registration for the name "King Kong" for use in connection with the sale and advertising of toys. Mego assigned this registration to RKO General, Inc., and the use made of the mark by Mego inures to the benefit of Universal. Universal does not have the documents relating to Mego's application.

Interrogatory No. 4

Describe each and every right you claim in the name, character and story of King Kong other than a right in a trade name, trademark or service mark.

Response to Interrogatory No. 4

Apart from the claim of rights set forth in Universal's Complaint, Universal claims the following:

(a) All rights except publishing rights in and to the story "King Kong", including but not limited to:

motion picture rights
free television rights
pay television rights (including pay cable)
videodisc and videocassette rights
radio rights
stage presentation rights
remake rights
sequel rights

(b) The right to use the character "King Kong" in and in connection with the exercise of any and all of the rights listed in paragraph (a) above.

(c) The right to use the name "King Kong" as part of the title of any motion picture or other production described in paragraph (a) above and in connection with videodiscs and videocassettes described in such paragraph (a).

Interrogatory No. 5

Identify any marketing or consumer surveys conducted since 1970 or presently being conducted by or on behalf of Universal, or which are available to Universal, with respect to the name, character or story of King Kong or Donkey Kong.

Response to Interrogatory No. 5

Universal knows of only two such surveys, one of which it declines to disclose pursuant to Fed. R. Civ. P. 26(b)(4), and the other a "pilot" survey undertaken by Universal's attorneys for this litigation, which it declines to disclose because it is attorney's work product. Both surveys were conducted in August of this year.

Interrogatory No. 6

Identify each and every person at Universal or its affiliate, Merchandising Corporation of America, Inc., responsible for developing and marketing, selling and promoting the name, character or story of King Kong, specifying the title

Interrogatory No. 7

Identify all licensees of the name, character, or story of King Kong. With respect to each license identify:

(a) the licensing agreement, the licensor, the date of the licensing agreement, and the licensee's last known address;
(b) the product of service with which the name, character or story of King Kong is associated;
(c) when and for how long the licensee marketed the product or service to which the name, character or story of King Kong was associated;
(d) the area in which the product or service was marketed and a description of how the product or service was sold; and
(e) the revenues derived from each license.

Response to Interrogatory No. 7

See response to Interrogatory No. 2. With respect to Universal's licensees from 1980 to present, said licensees are:

1) Ben Cooper Inc., the licensor being Merchandising Corporation of America;
2) Tiger Electronics, Inc., the licensor being Merchandising Corporation of America; and
3) Coleco Inc., the licensor being Universal.

Copies of the licensing agreements relating to the above licensees are annexed hereto in Document Folders 7 and 8. The Coleco agreement was produced for defendant's attorneys by letter dated October 20, 1982.

With respect to the Ben Cooper license, MCA has received revenue to date of $3,298.04. For a statement of revenues received in connection with the Tiger license, see the response to Interrogatory No. 13.

Interrogatory No. 8

Identify all documents that relate to the negotiations

and subsequent licensing of the King Kong name and King Kong character to Tiger Electronics, Inc. ("Tiger").

Response to Interrogatory No. 8

Copies of the documents requested are annexed hereto in Document Folder 8.

Interrogatory No. 9

Identify all persons who took part in the negotiations and licensing of the King Kong name or King Kong character to Tiger, specifying the title of each person.

Response to Interrogatory No. 9

Robert D. Hadl, Esq., Vice President of Universal; Steve Adler; and Loretta Sifuentes.

Interrogatory No. 10

State whether Tiger has manufactured any product using the King Kong name or character. If so, describe the product or products and how the King Kong name or character is used. State further how many items of each such product have been manufactured and when they were manufactured.

Response to Interrogatory No. 10

Yes, Universal understands that Tiger manufactures three such products: (1) a video cassette cartridge; (2) a table top mini-arcade; and (3) a hand held "King Kong" game

clock. The "King Kong" trade name appears on all three items, and the King Kong gorilla is shown in the games themselves. Universal will produce information pertaining to these games. Universal does not know how many of these articles Tiger has manufactured or when they were manufactured since Tiger has not yet reported this information to Universal.

Interrogatory No. 11

State whether Tiger has displayed, marketed or sold any product using the King Kong name or character. If so, describe the product and state where and when the product was displayed, marketed or sold and to whom the items were sold. If the product was sold, state the number of items sold.

Response to Interrogatory No. 11

Yes, Tiger has displayed, marketed and sold the items described in response to Interrogatory No. 10. Universal is unable to provide the remaining information as Tiger has not yet reported this information to Universal.

Interrogatory No. 12

If Tiger has manufactured, displayed, marketed or sold any product using the King Kong name or character, identify any documents, brochures, photographs or other materials in the possession, custody or control of Universal which are used to describe, advertise or promote said product.

Response to Interrogatory No. 12

See response to Interrogatory No. 10.

Interrogatory No. 13

State the amount of any revenues derived by Universal or any of its affiliates from the licensing of the King Kong name or character to Tiger and the date any such revenues were received by Universal or its affiliates.

Response to Interrogatory No. 13

Tiger paid MCA a nonrefundable advance of $15,000. Tiger has not yet reported to MCA or Universal regarding actual revenues received by it and therefore Universal cannot provide the information requested at this time.

Interrogatory No. 14

Identify all documents embodying any communication between Universal or any of its affiliates and Tiger that refers or relates to this lawsuit or Donkey Kong. If any such communications were oral, state the time and substance of such communications and the persons involved, specifying the title of each such person.

Response to Interrogatory No. 14

Telex, dated 5/4/82, from Steve Adler to Randy Rissman (see response to Interrogatory No. 8).

Telex, dated 5/7/82, from Loretta Sifuentes to Randy Rissman (see response to Interrogatory No. 8).

Interrogatory No. 15

State whether Universal or its affiliates have

Interrogatory No. 32

Are you aware of any specific instances where Donkey Kong has been confused with the name, character or story of King Kong. If so, state who was confused, when this confusion arose, and how and where Universal became aware of this confusion.

Response to Interrogatory No. 32

Apart from certain responses in the surveys identified in response to Interrogatory No. 5, which Universal declines to disclose, no.

Interrogatory No. 33

Has plaintiff received any inquiries from a) buyers or lessees or prosepective buyers of Donkey Kong, b) arcade operators, or c) players of the game Donkey Kong which referred to or mentioned King Kong. If so please identify all documents embodying such inquiries, and any responses thereto.

Responses to Interrogatory No. 33

Apart from inquiries described in response to Interrogatory No. 17, no.

Interrogatory No. 34

Has plaintiff received any inquiries from buyers, lessees, or licensees of the name, character or story of King Kong which referred to or mentioned Donkey Kong. If so, please

Response to Interrogatory No. 38

See response to Interrogatory No. 36.

Interrogatory No. 39

Does Universal claim any right, title or interest in the story King Kong. If so, state the nature of this right, title, or interest and identify all documents that relate to this right, title, or interest. In addition, identify any recordation of such story in which Universal claims an interest whether it be recorded in print, film, audio or other medium.

Response to Interrogatory No. 39

Yes, see response to Interrogatory Nos. 4 and 25. There are no responsive documents of which Universal is aware except (a) those referred to in the response given to Interrogatory Nos. 1 and 2 and (b) perhaps other documents in the RKO litigation which Universal's attorneys are in the process of obtaining. The story of King Kong includes the pictoral representation of the large gorilla King Kong holding the heroine captive atop a skyscraper. The story of King Kong in which Universal claims an interest has been recorded in the following motion pictures: "King Kong" (1933) and "King Kong" (1975). Further, the King Kong character is depicted in the motion pictures, "King Kong vs. Godzilla" and "King Kong Escapes", and in an animated television series titled "The King Kong Show".

Interrogatory No. 40

State with particularity the secondary meaning which

Universal contends has attached to the name, character or story of King Kong identifying specifically the individuals or entities which the public identifies as the origin or source of the name, character or story of King Kong.

Response to Interrogatory No. 40

The secondary meaning Universal contends has attached to the King Kong name, character and story is that the public associates the name King Kong, character ( i.e., the King Kong gorilla) and the King Kong story (including the pictorial representation of the King Kong gorilla atop a skyscraper, holding a woman captive) with the motion pictures entitled "King Kong" and with the makers of those motion pictures, to whose rights Universal has succeeded. Universal contends that the King Kong name, character and story have commercial magnetism, and that use of these elements in connection with goods or services causes consumers to believe that the makers of King Kong motion pictures sponsored or otherwise approved of such use.

Interrogatory No. 41

Identify any business entity, vocation, occupation, or other activity or activities to which Universal contends the trade name "King Kong" has attached.

Response to Interrogatory No. 41

See responses to Interogatories Nos. 2, 3, 7, 10, 11 and 16.